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| PRE-APPEAL BRIEF REQUEST FOR REVIEW | | Docket Number (Optional) |
|---|----------------|--------------------------|
| | | JRL-4009-23 |
| Application Number | Filed | |
| 10/087,995 | March 5, 2002 | |
| First Named Inventor | | |
| WILLIAMS | | |
| Art Unit | Examiner | |
| 2142 | Lin, Kelvin Y. | |
| <p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> Applicant/Inventor</p> <p><input type="checkbox"/> Assignee of record of the entire interest. See 37 C.F.R. § 3.71. Statement under 37 C.F.R. § 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> Attorney or agent of record 33,149 (Reg. No.)</p> <p><input type="checkbox"/> Attorney or agent acting under 37CFR 1.34. Registration number if acting under 37 C.F.R. § 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.*</p> <p><input checked="" type="checkbox"/> *Total of 1 form/s are submitted.</p> | | |


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July 27, 2007

Date

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of

WILLIAMS et al.

Atty. Ref.: 4009-23; Confirmation No. 3247

Appl. No. 10/087,995

TC/A.U. 2142

Filed: March 5, 2002

Examiner: Lin, Kelvin Y.

For: METHOD AND APPARATUS FOR ESTABLISHING A PROTOCOL PROXY FOR A
MOBILE HOST TERMINAL IN A MULTIMEDIA SESSION

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July 27, 2007

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ARGUMENTS IN SUPPORT OF PRE-APPEAL BRIEF REQUEST FOR REVIEW

The majority of the claims stand rejected for anticipation under 35 U.S.C. §102(e) based on commonly-assigned US Patent Application 2001/0026554 to Holler. Holler describes resource reservation for establishing end-to-end quality of service in a digital communication system without sending IP level resource reservation signaling over a radio interface to/from a mobile terminal 605. A node 602 in the wired network assumes the role of a resource reservation protocol proxy on behalf of the mobile terminal 605.

To establish that a claim is anticipated, the Examiner must point out where each and every limitation in the claim is found in a single prior art reference. Every limitation contained in the claims must be present in the reference, and if even one limitation is missing from the reference, then it does not anticipate the claim. Holler does not satisfy this rigorous standard.

Clear Error # 1: Holler's Mobile Does Not Send a Packet Access Bearer Request Message to the Access Point

Claim 1 recites a method implemented in a mobile terminal. The mobile terminal “send[s] a request message associated with the multimedia session *to the access point* requesting a *packet access bearer* between the mobile terminal and the *access point*.” Analogous language is recited in independent claims 8, 18, 25, and 38. In the final rejection, the Examiner relies on Figure 8 reproduced below, the ARQ message, the mobile terminal, and RSVP proxy 602/705. The Examiner also argues the claimed message could be the TerminalCapabilitySet message.

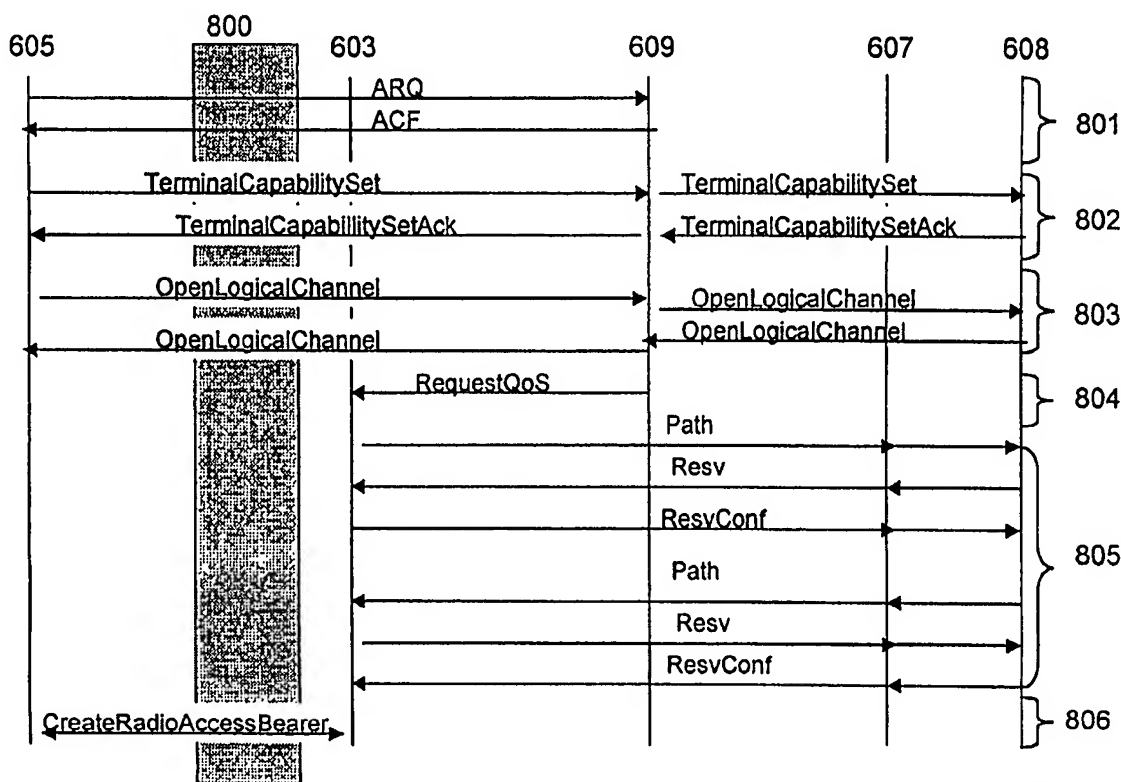


Fig.8

Neither the ARQ request message nor the TerminalCapabilitySet message is sent to the *to the access node* 603. Instead, that message is sent to the gatekeeper 609/701. In claim 1, the mobile terminal sends the request message to the access point asking it to set up a packet access bearer between the mobile and the access point. At the bottom of Figure 8, the mobile terminal 605 sends a CreateRadioAccessBearer message to the access node 603. So the only packet access bearer shown in Figure 8 is between the mobile 605 and the radio access node 603 rather than the

gatekeeper 609. In [0100], Holler explains that the access bearer set up is initiated by the mobile terminal 605 on the link layer (not the IP layer where the RSVP messaging occurs) and is between the mobile and the access node 603: “[a] radio access bearer is established with a corresponding quality of service between the link layer in the terminal 604 and the link layer in the radio access node 603.”

The Examiner argues that because Holler’s gatekeeper 609 includes means 610 for managing the process of using an actual RSVP proxy 602 and gatekeeper 701 includes similar RSVP proxy managing means 707, 712 for managing RSVP proxy 705, the gatekeeper 609 functions as the mobile’s proxy. But those gatekeeper means 610, 707, and 712 only manage the separate and distinct RSVP proxies 602 and 705, respectively associated with the access nodes 603 and 706. The gatekeeper means 610, 707, and 712 are not RSVP nodes themselves; nor do they function as an RSVP node for the mobile. Proxies 602 and 705 already exist and perform the RSVP proxy function for the mobile.

Clear Error #2: Holler’s Mobile Does Not Instruct RSVP Proxy 602, 705 To Be Its Proxy

The mobile terminal “set[s] an indicator in the request message indicating that the access point should function as a communications protocol proxy for the mobile terminal for a media data stream of the multimedia session.” The Examiner’s rejection points to [0095] where Holler explains that even though the mobile may have RSVP capabilities, the gatekeeper 609 tells the mobile it “shall not use its resource reservation capabilities.” See also [0096] where Holler explains “the terminal 605 is told to not use its resource reservation capabilities.”

In Holler, the gateway 609/701—not the mobile terminal 605—instructs the proxy 602/705 to be the RSVP proxy for the mobile. See [0080] and from [0081]: “[t]he [gateway] server 701 has means 712 for indicating that the resource reservation protocol signalling applies between the proxy 705 and the end node 704.” In contrast, claim 1 requires that *the mobile* send the RSVP request message.

The Examiner also argues that Holler’s mobile 605 sets the claimed an indicator in the TerminalCapabilitySet message. The purpose of the TerminalCapabilitySet message in Holler is not to request a radio access bearer for a media data stream in a multimedia session or to tell the

gatekeeper 609/701 that it should function as the mobile's RSVP proxy. As demonstrated above, the gatekeeper only "manages" the RXVP proxy 602/705—it does not function as the RSVP proxy. Nor does the TerminalCapabilitySet message 802 give an indication to an addressee to function as a protocol proxy. To the contrary, message 802 indicates that no resource reservation should be performed. See [0096], lines 7-12: "In the capability exchange signalling, the terminal 605 indicates in the TerminalCapabilitySet message, which is to be sent towards the end node 608, that quality of service not is going to be used since the terminal 605 is *told to not use its resource reservation capabilities*." (Emphasis added.)

Clear Error #3: The Applied Holler Reference Was Commonly Owned and Is Not Prior Art Under 35 U.S.C. §103

Claims 35-38 stand rejected under 35 U.S.C. §103 based on commonly-assigned US Patent Application 2001/0026554 to Holler et al in view of newly-applied USP 6,658,011 to Sevanto. As stated at the bottom of page 3 in the last response, "the subject matter of Holler and the claimed invention were, at the time the invention was made, owned by Telefonaktiebolaget LM Ericsson or subject to an obligation of assignment to Telefonaktiebolaget LM Ericsson. Consequently, Holler is unavailable as prior art. See 35 U.S.C. §103(c)."

The Examiner finds this statement to be insufficient because it was allegedly not made "in a conspicuous manner." The statement was conspicuous. It was easily seen as evidence by the fact that the Examiner did read and understand it. The statement made by an attorney of record was clearly presented in the prior response immediately after a paragraph introducing the rejection under 35 U.S.C. §103. The first MPEP example at §706.02(I)(2) section 2 of an acceptable statement is very similar to the statement made in this case:

In her response to the Office action, the attorney or agent of record for Application X states, in a clear and conspicuous manner, that:

"Application X and Patent A were, at the time the invention of Application X was made, owned by Company Z."

This statement alone is sufficient evidence to disqualify Patent A from being used in a rejection under 35 U.S.C. 103(a) against the claims of Application X.

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Neither a separate paper nor a separate heading are mentioned in this acceptable MPEP example or required by the statute. Moreover, the statement is made in this document under its own heading.


In addition, even if Holler were available as prior art, the text in Sevanto relied on by the Examiner merely discloses that PDP contexts exist. But that text does not teach the content of the PDP context activation message specifically recited in claim 35.

The final rejections should be withdrawn and the application allowed.

Respectfully submitted,

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